

# EMPLOYMENT LAW UPDATE

Relationship-Driven Results

June 2019

## JUDICIAL

### Federal

#### ***Dynamex Applied Retroactively***

The Ninth Circuit decided *Vazquez v. Jan-Pro Franchising International, Inc.*, a putative wage and hour class action. In *Vazquez*, the Ninth Circuit analyzed whether Jan-Pro's franchisees were in fact employees, as opposed to independent contractors. The Ninth Circuit held that the California Supreme Court's intervening decision in *Dynamex v. Superior Court* is controlling and applies retroactively.

In *Dynamex*, the California Supreme Court clarified that the standard presumption in California is that all workers are employees, rather than independent contractors. The Court also ruled that the burden of establishing the proper classification of an individual as an independent contractor falls on the hiring entity, pursuant to the ABC test that requires the hiring entity to establish that: (A) the worker is free from the control of the hiring entity; (B) the worker performs work outside the hiring entity's usual business; and (C) the worker is customarily engaged in an independent business of the same nature as the work performed.

Because the California Supreme Court merely clarified existing California law in *Dynamex*, as opposed to creating new law, the Ninth Circuit in *Vazquez* concluded that *Dynamex* must be applied retroactively and therefore remanded to the district court to consider the merits of the case in light of *Dynamex*.

*Save  
the  
Date*

Thursday  
November 14, 2019

**13<sup>th</sup> Annual  
Employment Law  
Symposium**

Farmer &  
The Seahorse  
at The Alexandria

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*We act with unparalleled integrity and professionalism at all times to earn the respect and confidence of all with whom we deal.*

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**Farmer & The Seahorse at The Alexandria**

*This program is pending approval for HR Certification Institute and SHRM credits.*

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*This is Pettit Kohn Ingrassia Lutz & Dolin PC's monthly employment update publication. If you would like more information regarding our firm, please contact Tom Ingrassia, Jennifer Lutz, Jenna Leyton-Jones, Ryan Nell, Jennifer Suberlak, Shannon Finley, Cameron Davila, Erik Johnson, Carol Shieh, Shelby Harris, Kristina Magcamit, or Brittney Slack at (858) 755-8500; or Grant Waterkotte, Tristan Mullis, Andrew Chung, Jennifer Weidinger, or Rachel Albert at (310) 649-5772.*